

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PATRICIA D. RADCLIFFE, *et al.*,

Plaintiffs,

v.

17-CV-512-LJV-HKS
DECISION & ORDER

UNITED STATES OF AMERICA,

Defendant.

On June 7, 2017, the plaintiffs, Patricia D. Radcliffe, Derrick McAlister, and Doreen E. McAlister, commenced this action under the Administrative Procedure Act and the Due Process Clause of the United States Constitution. They seek review of a final decision by the Department of Labor denying survivor claim benefits under Part B of the Energy Employees Occupational Illness Compensation Program Act of 2000 (“EEOICPA”), as amended, 42 U.S.C. § 7384, *et seq.* Docket Item 1. On August 15, 2017, this Court referred this case to United States Magistrate Judge H. Kenneth Schroeder, Jr., for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 9.

On December 1, 2017, the plaintiffs filed an opening brief, Docket Item 16; on June 21, 2018, the defendant responded, Docket Item 17; and on August 24, 2018, the plaintiffs replied, Docket Item 18. On November 23, 2020, Judge Schroeder issued a Report, Recommendation and Order (“RR&O”) finding that the Department of Labor’s final decision should be affirmed. Docket Item 19. The parties did not object to the

RR&O, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Schroeder's RR&O as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Schroeder's recommendation to affirm the Department of Labor's final decision denying survivor claim benefits under the EEOICPA.

For the reasons stated above and in the RR&O, the Department of Labor's final decision is AFFIRMED; the complaint, Docket Item 1, is dismissed; and the Clerk of the Court shall close the file.

SO ORDERED.

Dated: January 5, 2021
Buffalo, New York

/s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE